

REMARKS

Claims 1-11 are pending in the instant application. Claims 1-11 are subject to restriction and an election requirement.

Response to Election/Restriction Requirement

The Examiner has required a restriction of the claimed invention under 35 U.S.C. 121 and 372 from the following groups:

- I. Claims 1-7 in part, drawn the products of Formula I.
- II. Claims 8-11, in part, drawn to a process for using the products of Group I.

The Examiner suggests that the claims of Groups I-II do not relate to a single general inventive concept, because they lack the same corresponding special technical feature. The Examiner suggests that the structural feature common to the inventions of Groups I-II is a five membered heterocyclic ring with one nitrogen heteroatom (a dihydropyrrole), which is well known in the art.

Applicants respectfully elect Group I for examination, with traverse.

Applicants respectfully contend that there is a special technical feature that is incorporated in the compounds currently claimed in Claims 1-7 of the instant application that distinguishes those compounds from merely being dihydropyrrole derivatives. Applicants note that the compounds generically disclosed and claimed in the instant application all incorporate at least one phosphate moiety (-OPO(OH)₂). This particular feature of the disclosed KSP inhibitors useful for the treatment of cancer distinguishes those compounds from merely dihydropyrrole compounds (such as those compounds that the Examiner notes were disclosed in Ranjon). For this reason, Applicants respectfully contend that the instantly claimed compounds do share a "special technical feature" and the Restriction Requirement between Groups I and II should be rendered moot and should be withdrawn.

Applicants respectfully note that all of the currently pending inventions are directed to compounds falling within the scope of Claim 1 or their use in the treatment of cancer. Applicants respectfully contend that a search of the prior art directed to the phosphate containing dihydropyrrole compounds would not be an undue burden on the Examiner and would also clearly encompass all of the previously disclosed uses of such compounds (if such uses were previously known). A focused search on formula I compounds would be comprehensive for all of Groups I and II described by the Examiner. MPEP 803 provides:

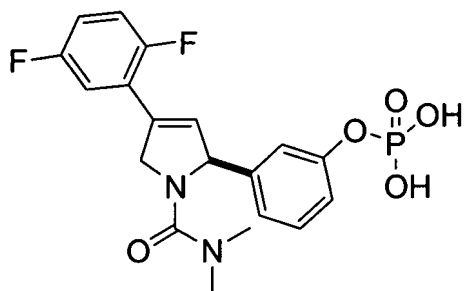
There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (1) The inventions must be independent or distinct as claimed; and
- (2) There must be a serious burden on the examiner if restriction is not required.

Because there would be no serious burden on the Examiner in searching such closely related inventions of Groups I and II as set forth by the Examiner, Applicant respectfully contends that the restriction requirement is improper.

Election

Applicants are required to elect a single disclosed species with a corresponding chemical structure for prosecution on the merits. Applicants hereby elect, with traverse, as a species the following compound, which can be found on page 86 of the specification:



8-2

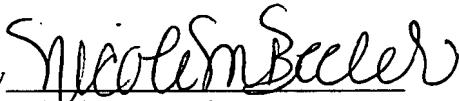
or the pharmaceutically acceptable salt thereof.

Applicants respectfully contend that Claims 1- 7 are readable on the elected species.

Applicants respectfully contend that Claims 1-11 as filed are allowable and an early Notice of Allowance is earnestly solicited.

If a telephonic communication with the Applicants' representative will advance the prosecution of the instant application, please telephone the representative indicated below. Applicants believe no additional fees are due but the Commissioner is authorized to charge any fees required in connection with this response to Merck Deposit Account No. 13-2755.

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